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COMBINATION BY COERCION. — The doctrine of Mr. Justice Holmes[1] that intentionally to injure another is a *prima facie* tort for which justification must be shown, has received such general acceptance in contemporary discussion that the chief question in the law of competition may, perhaps, now be said to be, what is a justification? It seems only a truism to say that whatever is a benefit to the public is a justification, and a statement in a recent Massachusetts case to that effect is therefore interesting only for its clearness. *Martell* v. *White et al.*, 69 N. E. Rep. 1085. But when that decision went further and held that the members of a manufacturer's association in bringing pressure to bear upon a fellow member, by means of heavy fines, for the purpose of forcing him not to deal with the plaintiff, were using business methods not beneficial to the public, it became of the greatest interest.

The advantages of competition are so well known that it seems but another truism to say that competition, by proper means, is a benefit to the public. That is to say, A can inflict intentional damage on B if it is done, (1) for a proper object, and (2) by proper means. It seems now to be clear that the object of competition in the broadest sense, viz., the advancement of one's own position in the "struggle for life," is completely a proper object. By far the greatest of recent services to this subject was rendered by Judge Holmes when he made that point clear.[2]

[1] Advanced in 8 HARV. L. REV. 1, and in dissenting opinions in Vergelahn *v.* Gunter, 167 Mass. 92, 104; and Plant *v.* Woods, 176 Mass. 492, 504.

[2] See dissenting opinions, *supra*. Where the object is improper, *e. g.*, the gratification of one's malice, there is an action. Walker *v.* Cronin, 107 Mass. 555; Delz *v.* Winfree, 80 Tex. 400.

The great controversy, however, comes with regard to the means. A, in order to advance his position in life, can carry his purpose with B by the use of any means not tortious *per se*. He can cut prices, refuse to work for B, or refuse to employ B, either in order to make B exchange his commodity on better terms, or in order to make B do some other non-tortious act for the benefit of A. And what A can thus do singly, he can persuade others to do with him in combination. In either case B has no action.[3] But it is believed that when by these acts A forces B against his will to join him in a conspiracy to use like methods towards C, C has an action against A, for the latter is using the methods of the boycott. There are three common classes of cases: (1) Where a trade-union forces a citizen of the community to combine with it in its action towards the plaintiff; (2) where a trade-union forces a master to conspire with it and discharge the plaintiff; (3) where a member of the same association or union is forced by heavy fines or other undoubted coercion to join the other members in boycotting the plaintiff. The principle in the three classes is identical. The first, which is the well-known boycott, has been declared to give the boycotted person an action;[4] the plaintiff has likewise, though with some hesitation, been allowed to recover in the second;[5] and the third class is now assimilated to the others by Martell *v.* White.[6] These decisions seem to warrant the suggestion that the view is coming to be that, while a competitor may use all means not tortious *per se*, forcing others to join a boycotting combination against the plaintiff is a means which, if not tortious *per se*, is at least in the same category. Nor is much argument needed to support so happy a result. That any individual or set of individuals should be able, by threats of damage, to construct of unwilling others a combination powerful enough to destroy whoever stands in the way of their private gain, is in the highest degree detrimental to society.

If this analysis is correct, there is still a troublesome question. As has been seen, A can persuade others to join him in his action towards his competitor. He can even offer special benefits as inducements to join him in turning against the other.[7] Thus in many cases will arise the difficult question whether B has been coerced or merely induced.[8] This, however, is a question of fact, and one which, it is arguable, might be left to the jury.

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CY-PRES. — In general the rule against remoteness, commonly termed the rule against perpetuities, has no effect on the construction of limitations of estates expressed in unambiguous language. An application of the *Cy-pres* doctrine, however, gives rise to one striking exception.[1] Where lands are devised to an unborn person for life, remainder to his children in tail, either

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[3] Bohn M'f'g Co. *v.* Hollis, 54 Minn. 223; Arthur *v.* Oakes, 63 Fed. Rep. 310.

[4] Casey *v.* Cincinnati Typo. Union, 45 Fed. Rep. 135; Barr *v.* Essex Trade Council, 53 N. J. Eq. 101; Quinn *v.* Leathem, [1901] A. C. 495.

[5] Plant *v.* Woods, *supra;* Lucke *v.* Clothing Assembly, 77 Md. 396; *contra,* Martell *v.* Victorian Miners Ass'n, 25 Austr. L. T. 40.

[6] Jackson *v.* Stanfield, 137 Ind. 592; Boutwell *v.* Marr, 71 Vt. 1, *accord.*

[7] Mogul Steamship Co. *v.* McGregor, [1892] A. C. 25.

[8] See Brown *v.* Jacobs Co. 115 Ga. 429, 449, distinguishing McCauley *v.* Tierney, 19 R. I. 255.

[1] See Gray, Rule against Perpetuities 386.